DOT Europe's response to the EC discussion papers on the future of the CoP on disinformation

Introduction and general remarks on the papers/the guidance

- The signatories have been actively working on the issue of disinformation in the framework of the Code for more than 2 years. All are still very committed to this process and see the Code as a useful tool contributing to a healthier online environment. We commend the Commission’s involvement in helping signatories to update and strengthen the Code of Practice.

- Whereas we understand the intention is for the Code to establish a bridge between the DSA and future legislation on political advertising, we are interested in knowing how the timing for this guidance could accommodate this goal? The DSA was just published and the legislation on political advertising is yet to be released. It is difficult in this context to anticipate the work of institutional negotiators in the Code of Practice. The Code of Practice’s monitoring should be adaptable to the service that it covers and provide enough flexibility for the exercise to remain relevant and reasonable for the signatories.

- We would also like to ask for more clarity from the Commission on its interpretation of “co-regulation”. In the discussion papers issued by DG CNECT there are references to both co-regulation as well as the strengthened code becoming a “Co-regulatory instrument”- yet there is considerable ambiguity as to what this would mean in practice. While we, the signatories recognise that there is a need to establish a more structured and robust oversight mechanism, we want to strongly reaffirm that this Code of Practice is a self-regulatory instrument, drafted by its signatories with the assistance of the Commission – and that any potential transition to co-regulation will need to be progressive in order to be successful. The objectives set out for the strengthening of the Code leave little for the signatories to decide despite the fact that Recital 67 of the DSA reaffirms this principle.

- We agree with the Commission’s focus on a multi-stakeholder effort with regards to disinformation. However, we deeply regret the lack of ambition of the Commission in that regard. For example, the traditional media sector also has a role to play, with their own objectives and sets of commitments as disinformation does not simply exist online – it often originates in the offline world (as observed here and here) and has concrete

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1 [...] “While the implementation of codes of conduct should be measurable and subject to public oversight, this should not impair the voluntary nature of such codes and the freedom of interested parties to decide whether to participate. [...]”

2 https://twitter.com/cwardle/status/1360238440927924227

3 https://twitter.com/rasmus_kleis/status/1367465197817797442

DOT Europe was formerly known as EDIMA
consequences for the consumers of traditional media. The Commission’s discussion papers however only require further expansion to more platforms and advertising sector representatives, missing the opportunity for the Code to become a more comprehensive and effective platform for a multi-stakeholder cooperation on fighting disinformation, safeguarding democratic values and protecting fundamental rights online.

- Furthermore we would like to highlight that the level of granularity of the data requested by the Commission in these discussion papers means that the frequency of reporting should not exceed one report per year, taking into account the amount of resources this requires. Monthly reporting as was done both for the European Parliament elections and the COVID 19 crisis will not be possible in the long run, nor proportionate.

- We would like to draw attention to the fact that there is an inherent tension between the promotion of authoritative sources and that of ensuring access to a plurality of views and perspectives.

The flexibility of the Code of Practice is its key strength

- While the Code of Practice was drafted with the upcoming 2019 European elections in mind, flexibility was from the onset a key part of its structure. It allowed more signatories to sign-on to the Code, tailor their commitments to what was appropriate and relevant to their services and allowed the signatories the leeway to quickly switch focus to Covid-19 when the health crisis started.

- The Commission sets out in the discussion papers that one of its objectives is to compare services against each other. This was never an objective of the Code and comparing signatories between each other amounts to comparing apples and oranges. Each service has its own particularities on how it showcases content - labelling disinformation in the same way on all services neglects to take into account the specificities of each service and how they are used. Harmonisation across the board, in terms of procedures, and reporting could potentially be useful for the evaluators of the Code but would undoubtedly undermine the fight against disinformation online which is the primary objective of the Code. It makes it more difficult to protect users from disinformation if companies are trying to adhere to metrics while bad actors are continuously developing new tactics. The Code and its KPIs need to acknowledge this environment, leave room to be adaptive and responsive to the threats and challenges we are facing.

- The Commission’s guidance needs to help online service providers best tackle disinformation depending on the nature of their service by providing them with concrete options/proposals.
Insofar as they touch on transparency and accountability, the Commission’s guidelines should focus on ensuring that each service invests in efforts and KPIs that would help outside observers assess its efforts, as relevant to the nature of its services and the user experiences they provide.

- We welcome the importance put on definitions in the papers, high-level definitions and a clear scope will help in the fight against disinformation. But advocating for a comprehensive and fixed list of certain disinformation methods would defeat the purpose of having a future-proof Code that enables companies to react to evolving patterns.

- Similarly, determining a fixed set of measures that companies should follow and implement to fight against disinformation would hamper companies' ability to innovate and intervene with other means to curb the use of new disinformation methods and risk making it impossible for companies to adapt when the behaviours of malicious actors inevitably evolve in response to platform interventions.

Cooperation with researchers and data sharing

- We welcome a more structured and streamlined cooperation with researchers. We are aware that research on disinformation is extremely valuable and can help the signatories better tackle the issue.

- Despite the GDPR “not a priori and across the board prohibiting the sharing of personal data by platforms with researchers”, we ultimately feel responsible for the protection and security of our users’ personal data. Any mishandling of this data can have very concrete consequences, being online and offline, and we cannot share it lightly. This needs to be reflected both in the guidelines for the review of the CoP and in the DSA.

- Companies are willing to improve our cooperation with researchers but it is important to remind that unlimited access to data is not possible nor proportionate.

- Hence, we are interested in knowing what kind of safeguards will be suggested by the Guidance in the cooperation between researchers and online services? What vetting procedures are foreseen of both researchers and fact-checkers? Is this a functionality that EDMO could perhaps help out with? Who will evaluate the researchers to ensure that they work in good faith and respect the framework for cooperation? What rules or commitments will be put in place to protect potential trade secrets of the signatories? The signatories are supportive of EDMO’s working group role in enhancing cooperation with researchers.
• In general, it is clear that there are aspirations for access to many different kinds of data across many different topics in the research ecosystem. However, it is not the case that platforms could technically provide that access overnight – often, it takes a lot of engineering work to ensure that systems can provide the level of precision and the levels of data aggregation that support research needs. As such it would be helpful for the EC guidelines to provide some sense of prioritisation on most urgent needs. We’d also suggest that it focuses on objectives (what researchers would want to get out of new data) rather than specific tools or datasets (which may not always be the best way to reach stated goals).

• The data that the EC aspires to collect is not readily available. We fully understand the impatience of regulators and researchers in gaining access to that data but making it available in a GDPR compliant manner and in a standardised format often requires technical tools that do not exist and take a very long time to develop. We would therefore need the necessary time to be able to develop the required data sets. In order for the signatories to be able to provide pertinent data to researchers, it is also important to have a specific insight on the purpose of the research being conducted. We are willing to work in that direction to make sure we can provide more specific and insightful data to researchers.

• Finally, it is important to clarify that a difference needs to be made between data provided to the public and researchers for transparency purposes and data made available as part of a monitoring exercise, to regulators. We cannot necessarily provide the same data in these two cases as they call for different standards and purposes. The signatories are willing to tailor as much as possible the data provided depending on the situation.
Oversight mechanism in the future Code

- We would appreciate elaboration on what role is foreseen for the online service providers in this mechanism/in the Code?

- Similarly we would welcome further explanation on the role of the Commission in this mechanism?

- What does this oversight mechanism entail?

- Companies are already engaged in reporting to the European Commission and remain committed to this cooperation as they have been since the launch of the Code.

- Companies have made progress in the framework of the Code in view of the vastness of the objectives set. It is important to agree on realistic goals to be achieved here.

- Signatories are interested to get a better understanding of the role the Commission wants to assign to EDMO, and in particular who the “national authorities” referred to in the discussion papers are- is this an interactions between EDMO and ERGA members?

- If EDMO is to have a larger role, we would be interested in understanding the selection criteria for their advisory board.

Impact

- The role of the Commission, ERGA, and other as critics of the Code continues to be helpful in further tailoring and adapting requests to emerging perceived threats. We feel there is a greater role to play in highlighting the impact of the measures taken and the progress made. Actions and updates from the companies around the EU elections and COVID have demonstrated their willingness to cooperate with local authorities, highlight authoritative information and address issues as they emerge. It is to the benefit of all stakeholders that these efforts are contributing to the overall goals and not pushed aside.
KPIs

- Signatories are open to discussing the KPIs of the Code. However, we continue to insist on the need for flexibility and for being realistic about the specificities of different services.

- Harmonized KPIs run the risk not to factor in the complexity of each service and the specific ways they are fighting disinformation. At best, they might set inappropriate incentives (e.g. a service focusing on improving turnaround time for removals because that’s a standard KPI, where it could actually have much more impact by rolling out product or policy changes). At worst, they might measure for irrelevant issues altogether, (e.g. mandating reporting on the prevalence of labels or fact-checks for a service that relies upon other means for context that make more sense in light of its users’ browsing habits).

- The need for flexibility will only grow over time as more platforms and usages come to the forefront, with different user experiences that need to be addressed on their merits. As we all know, the cross-platform nature of mis- and disinformation means that it is essential for the Commission to leave room for more services to participate to the Code in the future.

- Instead, the Commission’s purpose should be to make sure that relevant third parties (regulators, academia, civil society, the European public) can gather relevant insights into the ways each service can best tackle disinformation.

- Setting rigid KPIs in the framework of the Code would risk directly undermining the very goal it set out to address; and make it very unlikely to be future-proof.

Conclusion

While the set of discussion papers provides for interesting questions, we believe that the upcoming Commission’s guidance should provide for answers and help signatories in their update of the Code of Practice. Guidance on definitions (political / issue-based advertising for example) would be extremely valuable. Our aim is to make sure that the updated Code is future-proof, flexible and attractive for new signatories. Tackling disinformation online is a constant battle, as bad actors develop new ways to exploit the information ecosystem. We believe that our role is to make sure our users are not abused by these actors while safeguarding free speech and fundamental freedoms online. It will be impossible to completely get rid of disinformation online without disproportionately undermining these rights and freedoms and it is essential to find the right balance in that regard. It will be crucial in the near future to make sure that the full ecosystem, not just limited to online platforms and advertisers, is involved in this fight. The Code is not an end in itself, it is a starting point, one of the tools at our disposal and it will keep on evolving to improve our fight against disinformation.